

Title 14: COURT PROCEDURE -- CIVIL

Chapter 507: ATTACHMENTS

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Maine Revised Statutes
Title 14: COURT PROCEDURE -- CIVIL
Chapter 507: ATTACHMENTS

Subchapter 1: GENERAL PROVISIONS

§4101. ATTACHMENT BY COUNTERCLAIM, CROSS-CLAIM OR 3RD PARTY

Attachment of real estate, goods and chattels, or other property may be made by a party bringing a counterclaim, a cross-claim or a 3rd party complaint in the same manner as upon an original claim. For purposes of applicable statutes, the word "plaintiff" shall refer to the party to the action who makes the attachment and the word "defendant" shall refer to the party to the action whose property is attached.

§4102. SUBSEQUENT ATTACHMENTS

After service of the summons and complaint upon the defendant, the court on motion without notice may for cause shown order an additional attachment of real estate, goods and chattels on other property.

Subchapter 2: PERSONAL PROPERTY

Article 1: GENERAL PROVISIONS

§4151. PROPERTY SUBJECT TO ATTACHMENT

All goods and chattels may be attached and held as security to satisfy the judgment for damages and costs which the plaintiff may recover, except such as, from their nature and situation, have been considered as exempt from attachment according to the principles of the common law as adopted and practiced in the State, and such as are hereinafter mentioned. Such personal property may be attached on writs issued by the District Court in any division, when directed to the proper officer.

Following the entry of judgment in a civil action and prior to the issuance of a writ of execution upon the judgment, any interest in real or personal property, which is not exempt from attachment and execution, may be attached by the plaintiff by the filing in the registry of deeds for the county in which the property is located, with respect to real property, or in the office of the Secretary of State, with respect to property of a type a security interest in which may be perfected by a filing in such office under Title 11, Article 9-A, of an attested copy of the court order awarding judgment. Fees for the recording of the order must be as otherwise provided for similar documents. Notwithstanding section 4454, the filing constitutes perfection of the attachment. The party whose property has been so attached must be immediately notified by certified letter, mailed by the plaintiff to the party's last known address, which must inform the party that an attachment has been filed against the party's real or personal property and must specify the registry of deeds or office of the Secretary of State in which the attachment has been recorded. [1999, c. 699, Pt. D, §14 (AMD); 1999, c. 699, Pt. D, §30 (AFF).]

SECTION HISTORY

1985, c. 187, §1 (AMD). 1999, c. 699, §D14 (AMD). 1999, c. 699, §D30 (AFF).

§4152. PROPERTY KEPT WHERE FOUND; OWNER'S BOND

Personal property attached may be kept upon the premises where the same is found and the attaching officer may appoint a keeper thereof. If the owner of said property or the occupant of said premises requests the officer in writing to remove said keeper, the officer shall remove the property attached or the keeper without unreasonable delay. If the defendant in writing requests the officer making the attachment to allow

said property attached to remain upon the premises where found until he may give a bond dissolving said attachment, the officer shall not remove said property until the defendant has had a reasonable opportunity to give said bond.

§4153. ATTACHMENT OF HAY AND ANIMALS

When hay in a barn, horses or neat cattle are attached and are suffered to remain by permission of the officer in the defendant's possession on security given for their safekeeping and delivery to the officer, they are not subject to a 2nd attachment to the prejudice of the first.

§4154. OPTIONAL METHOD OF ATTACHMENT

Any interest in real or personal property, which is not exempt from attachment and execution, may be attached by the plaintiff by the filing in the registry of deeds for the county in which the property is located, with respect to real property, or in the office of the Secretary of State, with respect to property of a type a security interest in which may be perfected by a filing in such office under Title 11, Article 9-A, of an attested copy of the court order approving the real or personal property attachment, provided that the order is filed within 30 days after the order approving the attachment, or within such additional time as the court may allow upon a timely motion. Fees for the recording of the order must be as otherwise provided for similar documents. Notwithstanding section 4454, the filing constitutes perfection of the attachment and service of a copy of the court's order must be made upon the defendant in accordance with the Maine Rules of Civil Procedure pertaining to service of writs of attachment. [1999, c. 699, Pt. D, §16 (AMD); 1999, c. 699, Pt. D, §30 (AFF).]

SECTION HISTORY

1965, c. 306, §§30-A (AMD). 1981, c. 279, §5 (AMD). 1983, c. 125, §3 (RPR). 1985, c. 187, §2 (AMD). 1999, c. 699, §D16 (AMD). 1999, c. 699, §D30 (AFF).

§4155. SHARES IN A CORPORATION

(REPEALED)

SECTION HISTORY

1965, c. 306, §31 (RP).

§4156. FRANCHISE AND OTHER CORPORATE PROPERTY

The franchise and all right to demand and take toll and all other property of a corporation may be attached on mesne process, and the attaching officer shall serve an attested copy of the writ of attachment upon the corporation in the same manner as other process.

§4157. SUCCESSIVE ATTACHMENTS

Successive attachments in one or more counties may be made upon the same writ of attachment by the same or different officers before service of the summons upon the person whose property is attached; but none after such service except on order of the court on motion without notice and for cause shown. Personal property attached on process may be subsequently attached by a different officer, who shall furnish the last preceding attaching officer with a copy of the precept within a reasonable time.

§4158. REPLEVIN OF PROPERTY ATTACHED AND CLAIMED BY NON-PARTY TO ACTION; SALE

When personal property, attached on mesne process, is claimed by a person not a party to the action, he may replevy it within 10 days after notice given him therefor by the attaching creditor, and not afterwards. After that, the attaching officer, without impairing the rights of such person, at the request and on the responsibility of the plaintiff and with consent of other attaching creditors, if any, may sell it at auction as on execution, unless the debtor claims it as his and forbids the sale.

§4159. EFFECT OF CREDITOR'S FAILURE TO RECOVER JUDGMENT

If the attaching creditor, after having paid the amount ordered by the court, does not recover judgment, he may nevertheless hold the property until the debtor has repaid with interest the amount so paid.

§4160. RESTRICTION OF RIGHT TO ATTACH REPLEVIED GOODS

Goods, taken by replevin from an attaching officer, shall not be further attached as property of the original defendant in any other manner than that provided in sections 4202 and 4203, so long as they are held by the person who replevied them or by any one holding under him, unless the original defendant has acquired a new title to the goods.

Article 2: DEATH OR REMOVAL OF ATTACHING OFFICER

§4201. ATTACHED GOODS NOT ASSETS OF DECEASED OFFICER'S ESTATE

Personal property, attached by an officer and in his possession, and his claim for damages when it is taken from him remain subject to such attachment in case of his death, as if he were alive, and are not assets belonging to his estate.

§4202. REPLEVIED GOODS LIABLE TO FURTHER ATTACHMENTS

The property described in section 4201 replevied from the officer is liable to further attachments as if in his possession. If there is judgment for a return in the replevin action, the plaintiff and his sureties are liable for the whole property or its value, although some attachments were made after the replevin.

§4203. DEATH OR REMOVAL OF OFFICER; FURTHER ATTACHMENTS

If an attaching officer dies or is removed from office while the attachment is in force, whether the property was in his possession or not, it and its proceeds may be further attached by any other officer the same as it might have been by the first officer. Such further attachments shall be made by a return setting forth an attachment in common form and by whom the property was previously attached; and if the goods have not been replevied, by leaving a certified copy of the writ of attachment, omitting the declaration and of the return of that attachment, with the former officer if living, or if dead, with his executor or administrator, or if none has been appointed, with the person having possession of the goods; or if the goods have been replevied and the officer who made the original attachment is dead, such copy shall be left with his executors or administrators or with the plaintiff in replevin. The attachment shall be considered as made when such copy is delivered in either of the modes described.

Article 3: MORTGAGED OR PLEDGED PROPERTY

§4251. ATTACHMENT OF ENCUMBERED PERSONAL PROPERTY

Personal property not exempt from attachment, which is subject to a security interest or which has been mortgaged, pledged or subject to any lien created by law and of which the debtor has the right of redemption, may be attached, held and sold as if unencumbered, subject to sections 4159 and 4252 to 4256. [1967, c. 213, §5 (AMD).]

SECTION HISTORY

1967, c. 213, §5 (AMD).

§4252. LIABILITY OF OFFICER ATTACHING ENCUMBERED PROPERTY

When personal property, attached on a writ or seized on execution, is claimed by virtue of a security interest, mortgage, pledge or lien, the claimant shall not bring an action against the attaching officer therefor: [1967, c. 213, §6 (AMD).]

1. Notice. Until he has given him at least 48 hours' written notice of his claim and the true amount thereof; or

2. Payment. If the officer or creditor within that time discharges the claim by paying same or tendering the amount due thereon; or

3. Property restored. If the officer within that time restores the property; or

4. Claimant to answer. Where the property was attached on a writ or seized on execution while in the hands or possession of the debtor, the attaching creditor within that time summons the claimant to answer in the same action such questions as may be put to him relative to the consideration, validity and amount due secured by such security interest, mortgage or lien.

[1971, c. 622, §55-A (AMD) .]

Such summons may be in substantially the following form:

Summons to Claimant	
State of Maine, SS. A.B., Plaintiff v. C.D., Defendant E.F., Claimant	Superior Court Civil Action, File Number
	Summons

You are hereby summoned and required to appear at our Court, to be held at, on the day of in an action between, plaintiff, and, defendant, in which the following described property, claimed by you as secured party, was attached as the property of said defendant; viz.,, and there to answer in such action, such questions as may be put to you relative to the consideration, validity and amount justly due secured by such security, and abide the judgment of the court thereon.

If you fail to appear and answer, you will thereby waive the right to hold said property under the claimed security.

(Signed)

Clerk of said Superior Court

(Seal of the Court)

Dated

[1967, c. 213, §6 (AMD).]

Such summons, when property is attached on the writ, shall be returnable to the court to which the writ is returnable not less than 10 days nor more than 60 days after service thereof, and when property is seized on execution such summons shall be made returnable to the court issuing such execution on any day fixed by the court not less than 10 days nor more than 60 days thereafter. Service in either case shall be by copy of such summons. If in either case the secured party or claimant fails to appear and answer, or after hearing fails to establish his claim under such security interest, pledge or lien, he thereby waives the right to hold the property thereon. [1967, c. 213, §6 (AMD).]

SECTION HISTORY

1967, c. 213, §6 (AMD). 1967, c. 213, §6 (AMD). 1971, c. 622, §§55-A (AMD). 1971, c. 622, §55-A (AMD).

§4253. CLAIMANT TO ACCOUNT WITHIN 10 DAYS AFTER NOTICE; FALSE ACCOUNT

The officer may give the claimant written notice of his attachment. If he does not within 10 days thereafter deliver to the officer a true account of the amount due on his claim, he thereby waives the right to hold the property thereon as against the attaching creditor. If his account is false, he forfeits to the creditor double the amount of the excess, to be recovered in a civil action. [1967, c. 213, §7 (AMD).]

SECTION HISTORY

1967, c. 213, §7 (AMD).

§4254. VALIDITY OF CLAIM ESTABLISHED

If, upon examination held under section 4252, it appears that the security interest, mortgage, pledge or lien is valid, the court, having first ascertained the amount justly due upon it, may direct the attaching creditor to pay the same to the claimant or his assigns within such time as it orders. If he does not pay or tender the amount within the time prescribed, the attachment shall be vacated and the property shall be restored. If the attaching creditor pays or tenders the amount directed to be paid within such time and the claimant or his assigns fail to immediately assign such security interest, mortgage, pledge or lien to the attaching creditor, the claimant or his assigns shall be estopped from claiming any interest in such attached goods by virtue of his security interest, mortgage, pledge or lien. [1967, c. 213, §8 (AMD).]

SECTION HISTORY

1967, c. 213, §8 (AMD).

§4255. VALIDITY OF MORTGAGE TRIED BEFORE JURY; COSTS (REPEALED)

SECTION HISTORY

1967, c. 213, §9 (RP).

§4256. DISPOSITION OF PROCEEDS OF SALE

When the attaching creditor has paid to the claimant or his assigns the amount ordered by the court, the sheriff after making the sale shall pay to the creditor, and the creditor may retain out of the proceeds of the property attached, when sold, the amount so paid with interest, and the balance shall be applied to the payment of his debt. [1967, c. 213, §10 (AMD).]

SECTION HISTORY

1967, c. 213, §10 (AMD).

Article 4: PROPERTY OF PART OWNERS

§4301. PROPERTY OF PART OWNERS; ATTACHMENT; DISPOSAL

When personal property is attached in a civil action against one or more part owners thereof, at the request of another part owner, it shall be appraised as provided, one appraiser to be chosen by the creditor, one by the officer and the other by the requesting part owner. Thereupon it shall be delivered to such part owner on his giving bond to the officer with 2 sufficient sureties, conditioned to restore it in like good order,

pay the appraised value of the defendant's share therein or satisfy all judgments recovered in the attaching actions, if demanded within the time during which it would be held by the attachments. Such bond shall be returned with the writ of attachment with the doings of the officer thereon.

§4302. PAYMENT; PART OWNER'S LIEN; ATTACHMENT DISSOLVED

If any part of such appraised value is so paid, the defendant's share of the property is thereby pledged to the party paying. If not redeemed, he may sell it and account to the defendant for the balance, if any. If the attachment is dissolved, he shall restore such share to the defendant or to the attaching officer for him.

Article 5: SALES OF ATTACHED PROPERTY

§4351. SALE OF ATTACHED PERSONAL PROPERTY

When personal property is attached, the officer, by consent of the debtor and creditor, may sell it on the writ of attachment before or after filing in court, observing the directions for selling on execution. If it is attached by different officers, it may be so sold by the first attaching officer; or in case of his death, if he was a deputy sheriff, by the sheriff or another deputy by written consent of the debtor and all attaching creditors. The proceeds, after deducting necessary expenses, shall be held by the officer making the sale, subject to the successive attachments as if sold on execution.

§4352. PERISHABLE GOODS; SALE WITHOUT CONSENT

When personal property liable to perish, be wasted, greatly reduced in value by keeping or be kept at great expense is attached, and the parties do not consent to a sale thereof, the same may be ordered sold either before or after entry of the action, in accordance with sections 4158 and 4353 to 4355.

§4353. PETITION FOR SALE; ORDER

Either party may, on motion to the court setting forth the reasons therefor, petition the court to order the expeditious sale of the attached property. After such notice as the court may order and hearing on the motion, the court may, in its discretion, order the attached property to be sold and the proceeds held as security for the claim involved. As a part of its order, the court may impose such restrictions and conditions as it deems necessary for the conduct of such sale, the protection of lienors, the furnishing of bonds for the protection of the interests of any party, and to protect the interest of the attaching creditor and debtor.

§4354. PROCEEDS ATTACHED IN HANDS OF OFFICERS; SURPLUS

The proceeds of such property sold by order of court may be further attached by the officer as property of the defendant while remaining in his hands; and held and disposed of as if the property itself had been attached; but after retaining enough to satisfy all attachments existing thereon at any time, nothing herein shall prevent his paying the surplus to the debtor.

§4355. RIGHT OF PRIORITY IN CASE OF SALE PRESERVED

When goods which are sold by order of court in the manner provided have been attached by several creditors, any one of them may demand and receive satisfaction of his judgment, notwithstanding any prior attachments, if he is otherwise entitled to demand the money and a sufficient sum is left of the proceeds of the goods or of their appraised value to satisfy all prior attachments.

Article 6: EXEMPTIONS

§4401. ITEMS EXEMPT

(REPEALED)

SECTION HISTORY

1967, c. 412, §§2,3 (AMD). 1967, c. 496, (AMD). 1973, c. 377, §2 (AMD). 1973, c. 512, §1 (AMD). 1977, c. 453, §§1-3 (AMD). 1981, c. 431, §1 (RP).

§4402. DEBTOR'S INTEREST EXCEEDING INTEREST EXEMPT (REPEALED)

SECTION HISTORY

1977, c. 453, §4 (NEW). 1981, c. 431, §1 (RP).

Article 7: EXEMPTIONS

§4421. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following words have the following meanings. [1981, c. 431, §2 (NEW).]

1. Dependent. "Dependent" includes a spouse, whether or not actually dependent.

[1981, c. 431, §2 (NEW) .]

1-A. Debtor. "Debtor" means an individual debtor.

[1983, c. 125, §4 (NEW) .]

2. Value. "Value" means fair market value as of the date of the attachment or, in a proceeding under the United States Code, Title 11, the date of the filing of the petition.

[1981, c. 431, §2 (NEW) .]

SECTION HISTORY

1981, c. 431, §2 (NEW). 1983, c. 125, §4 (AMD).

§4422. EXEMPT PROPERTY

The following property is exempt from attachment and execution, except to the extent that it has been fraudulently conveyed by the debtor. [1985, c. 187, §3 (AMD).]

1. Residence. The exemption of a debtor's residence is subject to this subsection.

A. Except as provided in paragraph B, the debtor's aggregate interest, not to exceed \$47,500 in value, in real or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor, except that if minor dependents of the debtor have their principal place of residence with the debtor, the debtor's aggregate interest may not exceed \$95,000 and except that if the debtor's interest is held jointly with any other person or persons, the exemption may not exceed in value the lesser of \$47,500 or the product of the debtor's fractional share times \$95,000. [2007, c. 579, §1 (AMD).]

B. The debtor's aggregate interest, not to exceed \$95,000 in value, in property described in paragraph A, if the debtor or a dependent of the debtor is either a person 60 years of age or older or a person physically or mentally disabled and because of such disability is unable to engage in substantial gainful employment and whose disability has lasted or can be expected to last for at least 12 months or can be expected to result in death; except that if the debtor's interest is held jointly with any other person or persons, the exemption may not exceed in value the lesser of \$95,000 or the product of the fractional share of the debtor's interest times \$190,000. This paragraph does not apply to liens obtained prior to its effective date or to judgments based on torts involving other than ordinary negligence on the part of the debtor. [2007, c. 579, §2 (AMD).]

C. That portion of the proceeds from any sale of property which is exempt under this section shall be exempt for a period of 6 months from the date of receipt of such proceeds for purposes of reinvesting in a residence within that period. [1989, c. 286, §1 (NEW).]

[2007, c. 579, §§1, 2 (AMD) .]

2. Motor vehicle. The debtor's interest, not to exceed \$5,000 in value, in one motor vehicle.

[2001, c. 306, §2 (AMD) .]

3. Clothing; furniture; appliances; and similar items. The debtor's interest, not to exceed \$200 in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

[1981, c. 431, §2 (NEW) .]

4. Jewelry. The debtor's aggregate interest, not to exceed \$750 in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor and the debtor's interest in a wedding ring and an engagement ring.

[1991, c. 741, §2 (AMD) .]

5. Tools of the trade. The debtor's aggregate interest, not to exceed \$5,000 in value, in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor, including, but not limited to, power tools, materials and stock designed and procured by the debtor and necessary for carrying on the debtor's trade or business and intended to be used or wrought in that trade or business.

[1991, c. 741, §2 (AMD) .]

6. Furnaces, stoves and fuel. The debtor's interest in the following items held primarily for the personal, family or household use of the debtor or a dependent of the debtor:

A. One cooking stove; [1981, c. 431, §2 (NEW) .]

B. All furnaces or stoves used for heating; and [1981, c. 431, §2 (NEW) .]

C. All cooking and heating fuel not to exceed 10 cords of wood, 5 tons of coal, 1,000 gallons of petroleum products or its equivalent. [1981, c. 431, §2 (NEW) .]

[1981, c. 431, §2 (NEW) .]

7. Food, produce and animals. The debtor's interest in the following items held primarily for the personal, family or household use of the debtor or a dependent of the debtor:

A. All food provisions, whether raised or purchased, reasonably necessary for 6 months; [1981, c. 431, §2 (NEW) .]

B. All seeds, fertilizers, feed and other material reasonably necessary to raise and harvest food through one growing season; and [1981, c. 431, §2 (NEW) .]

C. All tools and equipment reasonably necessary for raising and harvesting food. [1981, c. 431, §2 (NEW) .]

[1981, c. 431, §2 (NEW) .]

8. Farm equipment. The debtor's interest in one of every type of farm implement reasonably necessary for the debtor to raise and harvest agricultural products commercially, including any personal property incidental to its maintenance and operation.

[1981, c. 431, §2 (NEW) .]

9. Fishing boat. The debtor's interest in one boat, not exceeding 46 feet in length, used by the debtor primarily for commercial fishing.

[2013, c. 510, §1 (AMD) .]

9-A. Logging implements. The debtor's interest in one of every type of professional logging implement reasonably necessary for the debtor to harvest and haul wood commercially, including any personal property incidental to its maintenance and operation.

[2009, c. 532, §1 (NEW) .]

10. Life insurance contract. Any unmaturing life insurance contract owned by the debtor, other than a credit life insurance contract.

[1981, c. 431, §2 (NEW) .]

11. Life insurance dividends, interest and loan value. The debtor's aggregate interest, not to exceed in value \$4,000 less any amount of property of the estate transferred in the manner specified in the United States Code, Title 11, Section 542(d), in any accrued dividend or interest under, or loan value of, any unmaturing life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is dependent.

[2011, c. 1, §19 (COR) .]

12. Health aids. Professionally prescribed health aids for the debtor or a dependent of the debtor.

[1981, c. 431, §2 (NEW) .]

13. Disability benefits; pensions. The debtor's right to receive the following:

A. A social security benefit, unemployment compensation or a federal, state or local public assistance benefit, including, but not limited to, the federal earned income tax credit and additional child tax credit; [2007, c. 276, §1 (AMD).]

B. A veterans' benefit; [1981, c. 431, §2 (NEW).]

C. A disability, illness or unemployment benefit; [1981, c. 431, §2 (NEW).]

D. Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; [2001, c. 306, §3 (AMD).]

E. A payment or account under a stock bonus, pension, profitsharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:

(1) The plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(2) The payment is on account of age or length of service; and

(3) The plan or contract does not qualify under the United States Internal Revenue Code of 1954, Section 401(a), 403(a), 403(b), 408 or 409; or [2001, c. 306, §4 (AMD).]

F. A payment or account under an individual retirement account or similar plan or contract on account of illness, disability, death, age or length of service to the sum of \$15,000 or to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, whichever is greater. [2001 , c. 306, §5 (NEW).]

[2007, c. 276, §1 (AMD) .]

14. Legal awards; life insurance benefits. The debtor's right to receive or property that is traceable to the following:

A. An award under a crime victim's reparation law; [1981, c. 431, §2 (NEW).]

B. A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; [1981, c. 431, §2 (NEW).]

C. A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; [1981, c. 431, §2 (NEW).]

D. A payment, not to exceed \$12,500, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or [1991, c. 741, §3 (AMD).]

E. A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. [1981, c. 431, §2 (NEW).]

[1991, c. 741, §3 (AMD) .]

15. Other property. The debtor's aggregate interest, not to exceed in value \$400, in any property, whether or not otherwise exempt under this section.

[1981, c. 431, §2 (NEW) .]

16. Unused residence exemption. The debtor's interest, equal to any unused amount of the exemption provided under subsection 1 but not exceeding \$6,000, in any property exempt under subsections 3 and 5 and subsection 14, paragraph D.

[1991, c. 741, §4 (AMD) .]

SECTION HISTORY

1981, c. 431, §2 (NEW). 1985, c. 187, §3 (AMD). 1989, c. 286, §1 (AMD). 1991, c. 741, §§1-4 (AMD). 1995, c. 35, §1 (AMD). 2001, c. 306, §§1-5 (AMD). 2003, c. 47, §§1,2 (AMD). 2007, c. 276, §1 (AMD). 2007, c. 579, §§1, 2 (AMD). 2009, c. 532, §1 (AMD). RR 2011, c. 1, §19 (COR). 2013, c. 510, §1 (AMD).

§4423. EXEMPT PROPERTY ACQUIRED WITHIN 90 DAYS

Notwithstanding section 4424, if within 90 days of the attachment, or, in a proceeding under the United States Code, Title 11, the date of the filing of the petition, the debtor transfers his nonexempt property and as a result acquires, improves or increases in value property otherwise exempt under section 4422, his interest shall not be exempt to the extent that the acquisition, improvement or increase in value exceeds the reasonable needs of the debtor or his dependents. [1983, c. 480, Pt. A, §9 (AMD).]

SECTION HISTORY

1981, c. 431, §2 (NEW). 1983, c. 480, §A9 (AMD).

§4424. INTEREST IN EXCESS OF EXEMPTION

1. Forced sale. If the debtor's interest in any property exempt under section 4422 exceeds the exempt amount, the whole of the property may be sold.

[1981, c. 431, §2 (NEW) .]

2. Distribution of proceeds. The proceeds of a sale under subsection 1 shall be distributed in the following order:

A. To the debtor in the amount of his exempt interest; [1981, c. 431, §2 (NEW) .]

B. To the creditor attaching or executing on the property; and [1981, c. 431, §2 (NEW) .]

C. To the debtor, the balance of the proceeds. [1981, c. 431, §2 (NEW) .]

[1991, c. 431, §2 (NEW) .]

3. Exception for residence. With respect to a residence in which the debtor has an exempt interest, the debtor may designate as exempt from sale under subsection 1 any part of the residence having a value not in excess of the amount of his exemption.

[1981, c. 431, §2 (NEW) .]

SECTION HISTORY

1981, c. 431, §2 (NEW) .

§4425. EXCEPTIONS

1. Residence. The debtor's interest in a residence shall not be exempt from claims secured by real estate mortgages on or security interests in the residence or claims of lien creditors under Title 10, chapter 603.

[1981, c. 431, §2 (NEW) .]

2. Other property. The debtor's interest in other property shall not be exempt from claims secured by purchase money security interests in the property, except that the debtor's interest in property otherwise exempt under section 4422, subsections 8 and 9 shall not be exempt from claims secured by security interests in the property.

[1981, c. 431, §2 (NEW) .]

SECTION HISTORY

1981, c. 431, §2 (NEW) .

§4426. EXEMPTIONS IN BANKRUPTCY PROCEEDINGS

Notwithstanding anything to the contrary in the United States Code, Title 11, Section 522(b), a debtor may exempt from property of the debtor's estate under United States Code, Title 11, only that property exempt under the United States Code, Title 11, Section 522(b)(3)(A) and (B), except that any debtor eligible for a residence exemption under section 4422, subsection 1, paragraph B, may exempt the amount allowed in that paragraph. [2011, c. 203, §1 (AMD) .]

SECTION HISTORY

1981, c. 431, §2 (NEW). 1989, c. 286, §2 (AMD). 2011, c. 203, §1 (AMD) .

Subchapter 3: REAL PROPERTY

Article 1: GENERAL PROVISIONS

§4451. REAL ESTATE AND INTERESTS SUBJECT TO ATTACHMENT

All real estate liable to be taken on execution as provided in chapter 403; the right to cut and carry away grass and timber from land sold by this State or Massachusetts, the soil of which is not sold and all other rights and interests in real estate may be attached on mesne process and held to satisfy the judgment recovered by the plaintiff, but the officers need not enter on or view the estate to make such attachment.

§4452. WRIT OF ATTACHMENT FROM DISTRICT COURT

If a District Court has jurisdiction in any action, real estate and interests in real estate attachable on writs of attachment from the Superior Court may be attached on writs of attachment or taken on executions from such court.

§4453. ATTACHMENT OF RIGHT OF REDEMPTION

When a right of redeeming real estate mortgaged or taken on execution is attached and such estate is redeemed or the encumbrance removed before the levy of the execution, the attachment holds the premises discharged of the mortgage or levy, as if they had not existed.

§4454. RECORDING NECESSARY TO VALIDITY; CLAIM SPECIFIED IN WRIT; SEIZURE ON EXECUTION; LIEN

No attachment of real estate on mesne process creates any lien thereon, unless the nature and amount of plaintiff's demand is set forth in the complaint or specifications therein or account annexed thereto, nor unless the officer making it within 5 days thereafter files in the office of the register of deeds in the county or district in which some part of said estate is situated an attested copy of so much of his return on the writ of attachment as relates to the attachment, with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ of attachment and the court to which it is returnable. If the copy is not so filed within 5 days, the attachment takes effect from the time it is filed, although it is after service on the defendant, if before the time he is required to serve his answer. No seizure of real estate on execution, where there is no subsisting attachment thereof made in the action in which such execution issues, creates any lien thereon, unless the officer making it within 5 days thereafter files in the office of the register of deeds in the county or district in which some part of said estate is situated an attested copy of so much of his return on said execution as relates to the seizure, with the names of the parties, the date of the execution, the amount of the debt and costs named therein and the court by which it was issued. If the copy is not so filed, the seizure takes effect from the time it is filed. Such proceedings shall be had in such office by the register of deeds, as are prescribed in Title 33, chapter 11. All recorded deeds take precedence over unrecorded attachments.

§4455. ACTION INEFFECTUAL AGAINST NONPARTY UNTIL ATTACHMENT RECORDED

No action in which the title to real estate is involved is effectual against any person not a party thereto or having actual notice thereof until either:

1. Attachment made and recorded. An attachment of such real estate is duly made and recorded in the registry of deeds, in and for the county or district in which such real estate is situated, in the same manner as attachments of real estate in other actions are now recorded; or

2. Certificate recorded. A certificate setting forth the names of the parties, the date of the complaint and the filing thereof and a description of the real estate in litigation as described in said complaint, duly certified by the clerk of courts in and for the county where said complaint is pending is recorded in the registry of deeds in the county or district in which such real estate is situated.

§4456. REDEMPTION OR PAYMENT WHERE RIGHT OF REDEMPTION OR CONTRACT FOR CONVEYANCE ATTACHED

When a right to redeem real estate under mortgage, levy, sale on execution or for taxes or a right to a conveyance by contract is attached, the plaintiff in the action, before or after sale on execution, may pay or tender to the person entitled thereto the amount required to discharge such encumbrance or fulfill such contract. Thereby the title and interest of such person vest in the plaintiff subject to the defendant's right to redeem. Such redemption by the defendant or any person claiming under him by a title subsequent to the attachment shall not affect such attachment, but it shall continue in force and the prior encumbrance as against it shall be deemed discharged.

§4457. MORTGAGEE OR CONTRACTOR TO INDICATE SUM DUE AND RELEASE ON PAYMENT

Such person, on written demand, shall give the plaintiff a true written statement of the amount due him; and on payment or tender thereof shall release all his interest in the premises; and if he refuses, he may be compelled to do so in a civil action seeking equitable relief. Such release shall recite that under authority of this section and section 4456 the plaintiff had attached the premises and paid or tendered the amount due the grantor. The plaintiff shall thereupon hold such title in trust for the defendant, and subject to his right of redemption, without power of alienation until after one year from the termination of said action, or from the sale of the equity on any execution recovered therein.

Article 2: DEATH OF PARTY**§4501. ATTACHMENTS SURVIVE DEATH OF PLAINTIFF**

When a plaintiff dies before the expiration of 60 days from the rendition of judgment in his favor, or before the expiration of 60 days after the clerk of courts in the county where the action is pending receives a certificate of decision from the law court ordering final judgment for the plaintiff, and no suggestion of death has been made upon the docket of said courts, execution may issue as is now provided and all attachments then in force continue for 90 days thereafter.

§4502. ATTACHMENTS DISSOLVED BY DEATH OF INSOLVENT

The attachment of personal property continues in force after the death of the debtor as if living, unless before a sale thereof on execution his estate is decreed insolvent; but it is dissolved by such decree, and the officer, on demand thereafter, shall restore such property to the executor or administrator on payment of his legal fees and charges of keeping.

§4503. LIABILITY OF OFFICER SELLING BEFORE DEMAND; SETOFF PROHIBITED

If, after such decree and before such demand, the officer has sold the property on execution, he is liable to the executor or administrator in a civil action, for the proceeds, if in his hands; but if paid over to the judgment creditor, such creditor is so liable, and he shall not set off any demand which he has against the executor or the administrator or against the estate of the deceased.

§4504. APPRAISAL OF ATTACHED PROPERTY

After the death of a defendant and before a decree of insolvency on his estate, the executor or administrator may demand of the attaching officer a certified copy of his return on the writ of attachment, with a description of the property attached, so that it may be described in the inventory of the estate subject to the attachment, and the appraisers may demand a view thereof so as to appraise it. If the officer fails to comply with either demand, he forfeits to the executor or administrator not less than \$10 nor more than \$30.

§4505. ACTIONS BY OFFICERS FOR ATTACHED GOODS DO NOT ABATE BY PARTY'S DEATH

An action, brought by an officer for taking from him personal property attached by him, does not abate by the death of either party, but may be prosecuted by or against his executor or administrator. If the officer is dead and his representative recovers the property or money, it shall be held and applied as if he were alive, but, if he fails to recover, he shall return the property or pay the damages awarded in full, although the estate of the deceased is insolvent.

§4506. CONTINUANCE OF ACTION AFTER OFFICER'S DEATH

If an officer authorized to serve precepts dies pending an action for or against him for official neglect or misconduct and no administration is granted on his estate within 3 months thereafter, the party for whose benefit the action is so prosecuted or defended may carry it on in his own name by entering his appearance and giving security for costs, as the court directs.

Article 3: EXEMPTIONS

§4551. HOMESTEAD EXEMPTION

(REPEALED)

SECTION HISTORY

1973, c. 512, §2 (RPR). 1977, c. 453, §5 (AMD). 1977, c. 614, (AMD).
1979, c. 75, §1 (AMD). 1981, c. 431, §3 (RP).

§4552. EXCEPTIONS

(REPEALED)

SECTION HISTORY

1967, c. 412, §4 (AMD). 1969, c. 315, §§1,2 (AMD). 1973, c. 512, §3
(RPR). 1981, c. 431, §3 (RP).

§4553. CREDITORS CLAIMING GREATER VALUE

(REPEALED)

SECTION HISTORY

1969, c. 315, §3 (AMD). 1973, c. 512, §4 (RPR). 1977, c. 453, §6 (AMD).
1979, c. 75, §2 (AMD). 1981, c. 431, §3 (RP).

§4554. DEATH OF HOUSEHOLDER

(REPEALED)

SECTION HISTORY

1973, c. 512, §5 (RPR). 1979, c. 540, §19 (RPR). 1981, c. 431, §3 (RP).

Article 4: EXEMPTIONS

§4561. RESIDENCE EXEMPTION

Exemptions with respect to residences are governed by subchapter II, Article 7. [1981, c. 431, §4 (NEW).]

SECTION HISTORY

1981, c. 431, §4 (NEW).

Subchapter 4: DISSOLUTION

§4601. DURATION OF ATTACHMENT

An attachment of real or personal estate continues during the time within which an appeal may be taken from the judgment and during the pendency of any appeal. When a judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an appeal or on certificate of decision from the law court, any such attachment shall continue for 60 days; except attachments of real estate taken on execution; or equities of redemption sold on execution; or an obligee's conditional right to a conveyance of real estate sold on execution; or property attached and replevied; or property attached belonging to a person dying thereafter, or specially provided for in any other case. [1987, c. 184, §21 (AMD).]

In addition to any other provisions of law, attachments of real or personal estates may be enforced and their duration may be extended as provided in sections 3131, 3132 and 4651 [1987, c. 184, §21 (NEW).]

SECTION HISTORY

1981, c. 279, §6 (AMD). 1987, c. 184, §21 (AMD).

§4602. METHODS OF DISSOLUTION

An attachment of real or personal property is dissolved when a judgment for the defendant has become final by expiration of the time for appeal, by dismissal of an appeal or on certificate of decision from the law court; by a decree of insolvency on his estate before a levy or sale on execution; by insolvency proceedings commenced within 4 months as provided in the insolvency law; by a reference of the action and all demands between the parties thereto by a rule of court and judgment on the report of the referees; and by an amendment of the complaint, by consent of parties, so as to embrace a larger demand than it originally did, and judgment for the plaintiff thereon, unless the record shows that no claims were allowed the plaintiff not originally stated in the complaint.

§4603. CERTIFICATE OF DISSOLUTION

When an attachment is dissolved by judgment for the defendant, or if the complaint in the action in which an attachment is made is not filed with the court within 30 days after the first attachment therein, the clerk of the court shall give any person applying therefor a certificate of that fact, which the register of deeds shall note on the margin of the record of the attachment. The said clerk of courts may charge a fee of 50¢ for such certificate.

Before or after the filing of said complaint in said court, or before or after judgment thereon, or if said complaint is not filed in court, the plaintiff or his attorney in such action may discharge the attachment in writing on the margin of the record thereof, or said plaintiff or said attorney may give a certificate, signed, sealed and acknowledged by him that said attachment is in whole or in part discharged, which the register of deeds shall record with a reference thereto on the margin of the records of attachments. The register of deeds shall note the record of said discharge on the margin of the records of attachments within an hour of the delivery to him of either of the aforesaid certificates. Such attachments may be discharged on the record thereof in the registry of deeds by an attorney-at-law authorized in writing by the plaintiff in said action, provided said writing is first recorded or filed in said registry of deeds with a reference thereto made by said register of deeds on the margin of the record of the attachment.

§4604. REAL ESTATE ATTACHMENT DISCHARGED OF RECORD ON DISSOLUTION

When an attachment of real estate is made in any action and the complaint is not filed in court, or when any attachment of real estate is dissolved by lapse of time or failure to levy upon the judgment debt within the time prescribed by law to preserve said attachment and the said attachment then remains undischarged upon the records of the registry of deeds, the plaintiff upon the demand of the defendant shall either cause the said attachment to be discharged upon the records of the registry of deeds or give a certificate, signed, sealed and

acknowledged by him that said attachment is discharged, when said certificate is prepared and presented to the plaintiff by the defendant, which said certificate the register of deeds shall record with reference thereto on the margin of the record of said attachment.

§4605. FAILURE OR REFUSAL TO DISCHARGE ATTACHMENT

If the plaintiff shall upon demand unreasonably delay or refuse to discharge the said attachment as prescribed in section 4604, then the defendant by action filed in the county in which the attachment of said real estate was made shall be entitled on proof thereof to have the attachment discharged by a decree of the court duly filed in the registry of deeds, which the register of deeds shall record with reference thereto on the margin of the record of said attachment.

§4606. PETITION FOR VALUATION AND RELEASE

Any defendant, whose interest in real estate is attached on mesne process, may petition the Superior Court, setting forth the names of the parties to the action, the court and county in which it is returnable or pending, the fact of the attachment, the particular real estate and his interest therein, its value and his desire to have it released from the attachment. Such court shall issue a written notice which shall be served on all parties to the action living in the State, including trustees mentioned in section 4611, and on the plaintiff's attorney, 10 days at least before the time fixed therein for a hearing.

§4607. VALUATION AND RELEASE ON DEBTOR'S BOND

If, at the hearing, such court finds that such interest is worth as much as the amount ordered in the writ to be attached, it shall order such defendant to give bond to the plaintiff, with sufficient sureties, conditioned that within 30 days after judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an appeal or on certificate of decision from the law court, he will pay the judgment recovered by the plaintiff, with his costs on the petition, such bond, except as otherwise provided, to be in an amount equal to the amount ordered in the writ to be attached; but, if it finds that such interest is worth less than the amount ordered in the writ to be attached, such bond, except as otherwise provided, shall be in an amount equal to the value of such interest. If, in either event the court shall find that the value of the interest attached is in excess of the amount of any judgment which the plaintiff may reasonably be expected to recover, with his costs on the petition, it may fix the amount of such bond at such sum, not exceeding the amount ordered to be attached and not exceeding the value of the interest attached, as it may deem adequate to protect the plaintiff in the collection of any judgment recovered by him, with his costs on the petition.

§4608. PROCEEDINGS AND BOND FILED IN CLERK'S OFFICE

The petition and proceedings thereon shall be filed in the clerk's office in the county where the action is pending or returnable and recorded as a part of the case. The bond, when approved by such justice, shall be filed therein for the use of the plaintiff.

§4609. CERTIFICATE OF PROCEEDINGS FROM CLERK RECORDED

The clerk shall give the petitioner an attested copy of the petition and proceedings with a certificate under seal of the court attached thereto, that such bond has been duly filed in his office. The recording of such copy and certificate in the registry of deeds in the county where such real estate or interest therein lies vacates the attachment.

§4610. VACATING ATTACHMENT OF PERSONAL PROPERTY

When personal property is attached, the same proceedings may be had as provided in sections 4606 to 4609 and the officer shall be notified of the hearing, and the delivery to him of the copy and certificate mentioned in section 4609 vacates the attachment and he shall return the property to the petitioner on demand. When the property attached is stock in a banking or other corporation or is such that the attachment must be recorded in the town clerk's office, such copy and certificate shall be filed with the officer of such corporation, who shall be entitled to 20¢ for filing the same and necessary certificate thereof, or with the town clerk with whom the attachment is filed, and thereby the attachment is vacated.

§4611. VACATING FOREIGN ATTACHMENTS

In cases of foreign attachment, the same proceedings originated by any principal defendant may be had, except that the bond to the plaintiff shall be conditioned to pay the amount, if any, which he may finally recover against the trustees, with costs on the petition, within 30 days after judgment, not exceeding the amount of the judgment against the principal defendant. The court shall require the petitioner to give bond to each trustee named in the petition, with sureties, in a sum sufficient to protect him against any judgment recovered by the plaintiff and paid by him, and his legal costs in the action, and the costs allowed him by the court at the hearing on the petition, if he appears. Such bonds, when approved by the court, shall be filed in the clerk's office for the use of the trustees. The delivery of the copy and certificate to the trustees vacates the attachment of any goods, effects or credits in their hands belonging to the petitioner.

§4612. COSTS

The party finally prevailing in the action shall recover the costs of these proceedings, taxed as costs of court in other cases and certified by the court, and execution shall issue therefor.

§4613. BOND

When real estate or personal property is attached on mesne process, and in all cases of attachment on trustee process, the attachment shall be vacated upon the defendant or someone in his behalf delivering to the officer who made such attachment, or to the plaintiff or his attorney, a bond to the plaintiff in a penal sum not exceeding the amount of the attachment, such bond to be approved as to penal sum and sureties by the plaintiff or his attorney, or by any Justice or clerk of the Superior Court, conditioned that within 30 days after the rendition of the judgment, or after the adjournment of the court in which it is rendered or after the certificate of decision of the law court shall be received in the county where the cause is pending, he will pay to the plaintiff or his attorney of record the amount of said judgment including costs. The bond shall be returned by the officer with the process, for the benefit of the plaintiff, and thereupon all liability of the officer to the plaintiff by reason of such attachment shall cease. Upon request, the plaintiff or his attorney shall give to the defendant a certificate acknowledging the discharge of such attachment, which may be recorded in the registry of deeds or town clerk's office, as the case may be, in which the return of the attachment is filed. If stock in any corporation is attached, such certificate shall be filed with the officer of the corporation with whom the return of such attachment is filed and he shall record the same. In trustee process the alleged trustee shall not be liable to the principal defendant for the goods, effects and credits in his hands or possession until such certificate shall be delivered to him, and upon receiving such certificate he shall be discharged from further liability in said trustee action and need not disclose and shall not recover costs.

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